IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 14367 of 2004

Between:

J. Deshya Naik, S/o. Badru Naik, FP shop dealer
(Under Cancellation Proceedings) of Shop No. 248 Circle No.II, Hyderabad,
R/o. 18-2-197/293, Ravindra Naik Colony, Falaknuma, Hyderabad 53.

..... PETITIONER

AND

The District Supply Officer (City) Near Anand Talkies, Hyderabad.
(Civil Supplies Department)

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably writ of mandamus declaring the order issued by the Respondent in his proceedings R.C.No.B1/2914/2004, dt. 24-07-2004 is illegal, arbitrary and violative of Principles of natural justice and consequently direct the respondent to continue the petitioner as Fair Price Shop Dealer

Counsel for the Petitioner : MR.KOWTURU VINAYA KUMAR

Counsel for the Respondent : GP FOR CIVIL SUPPLIES

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.14367 OF 2004

ORDER :

The petitioner was appointed as the authorized dealer of Fair Price Shop No.248, Circle No.II, Hyderabad vide proceedings No.76/2000, dated 26-04-2000. He contested in the bye-election of Ward Member for Ward No.61, Jangammet of Municipal Corporation of Hyderabad and was declared elected on 17-07-2004. Thereafter, the District Supply Officer (city), Hyderabad issued the order dated 24-07-2004 stating that consequent to his election as Member of Municipal Corporation of Hyderabad, the authorization issued to the petitioner has been automatically rendered invalid as per Clause (5) and Clause (3) (e) of Annexe, to A.P. State Public Distribution System (Control) Order, 2001 and therefore the vacancy to Fair Price Shop No.248 will be notified in due course. Under the same order, the household supply cards of the said fair price shop No.248 have been tagged on to fair price shop No.292 until further orders to avoid inconvenience to the cardholders. The said order dated 24-07-2004 is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for Civil Supplies appearing for the respondent.

The learned Counsel for the petitioner contended that since admittedly the impugned order has been issued without any prior notice to the petitioner and without conducting any enquiry whatsoever, the impugned order is ex facie illegal and liable to be set aside in limini. He contends that under the provisions of the A.P. State Public Distribution System (Control) Order, 2001 (for short, 'Control Order, 2001') the respondent is not empowered to unilaterally cancel the authorization without affording an opportunity of being heard to the petitioner. The learned Counsel for the petitioner also vehemently contended that since there is no prohibition as such under any Statute from contesting as Ward Member of the Municipal Corporation, the respondent is not justified in cancelling the authorisation straightaway.

On the other hand, the learned Government Pleader for Civil Supplies appearing for the respondent submitted that both under the provisions of the Control Order, 2001 as well as the Guidelines issued for selection and appointment of Fair Price Shop dealers, a person holding a public office is disqualified either for appointment or to continue as the Fair Price Shop Dealer and therefore the respondent has rightly issued the impugned proceedings.

Under clause 5 (1) of A.P. State Public Distribution System (Control) Order, 2001 every fair price shop dealer on his appointment as such should give an undertaking to the appointing authority concerned that he or she would relinquish the dealership if he or she is elected to any public office. That apart, clause 3 (e) of Annexe to the Control Order, 2001 mandates that no authorized fair price shop shall hold any office in public life with or without remuneration. Even as per the Guidelines issued under G.O.Ms.No.53, Consumer Affairs (CS-I) Department, dated 6-10-2003 for the purpose of selection and appointment of fair price shop dealers under the Control Order, 2001 all the individuals holding any public office including the Councillors or Chairman of Municipality irrespective of the reservation shall not be eligible for appointment.

Admittedly, the petitioner has been elected as a Member of the Municipal Corporation of Hyderabad, which is a public office. It is also not in dispute that the petitioner having been granted the authorization as a Fair Price Shop Dealer is bound by the aforesaid provisions of the Control Order, 2001 and the Guidelines. If that be so, undoubtedly the petitioner incurred a disqualification on being elected as a Member of the Municipal Corporation of Hyderabad. In the circumstances, as rightly ordered by the District Supply Officer, the authorisation of the petitioner has been automatically rendered invalid. It is not a case of cancellation of authorization as sought to be contended by the learned Counsel for the petitioner. Therefore, the contention that the impugned order is illegal for want of prior notice is misconceived and cannot be accepted.

The learned Counsel for the petitioner has placed reliance upon *B.VENKATESWARA RAO v. REVENUE DIVISIONAL OFFICER* whereunder this Court while considering the correctness of the order of suspension pending enquiry observed that the order impugned in the said case was vitiated on the ground of violation of principles of natural justice for want of prior notice. The said decision is not at all attracted to the case on hand. Similarly, the other decision cited by the learned Counsel for the petitioner in *M.SADASIVA SEKHAR v. DISTRICT COLLECTOR, KURNOOL is* also not applicable. In the said case, the question that fell for consideration was whether the petitioner therein whose authorization was cancelled has suffered any prejudice on being denied an opportunity of personal hearing.

In the case on hand, the election of the petitioner to a public office being an admitted fact and particularly since as per the provisions of the Control order, the disqualification on election to a public office is automatic, it cannot be said that the impugned order is arbitrary or illegal or violative of the principles of natural justice.

The Writ Petition is devoid of any merit and is accordingly dismissed. No costs.

25th August, 2004.

Gbs

To

1. The District Supply Officer (City) Near Anand Talkies, Hyderabad.
   (Civil Supplies Department)

2. 2CCs to G.P. for Civil Supplies, High Court of A.P.Buildings, Hyderabad. (OUT).

3. 2CD copies